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Via E-Mail to regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1404, Notice of Proposed Rulemaking on Debit Interchange Rees and Routing

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") on behalf of Compass Bank, an Alabama banking corporation ("Compass"), in response to the Board's request for comment on proposed rules (the "Proposed Rules") to implement Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") as set forth in the Notice of Proposed Rulemaking published in the Federal Register on December 28, 2010 (the "Comment Request").

Compass is a Sunbelt-based, regional commercial financial institution owned by Compass Bancshares, Inc. a bank holding company that is wholly owned by BBVA (NYSE: BBV) (MAD: BBVA). Compass has over $60 billion in assets and, through its operating companies, maintains more than 717 branches in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. Compass is among the top 15 largest banks in the U.S. based on deposit market share.

Compass appreciates the opportunity to comment on the Proposed Rules. We have serious concerns that the Proposed Rules deny financial institutions fair market compensation for the maintenance of the payments systems and underlying accounts that allow the Debit process to work well. As such, the proposed changes to debit card transaction services would have a negative rippling effect on financial institutions, merchants, and ultimately consumers.

Specifically, these proposed changes would impose transaction fee limits at levels substantially below banks fixed costs for debit interchange transaction services-regardless of transaction size at 7-12 cents per transaction, estimated to be roughly 80% below today's fees. This loss of revenue would cause banks to operate their debit business *at a loss*, a situation which is clearly not acceptable to a regulated financial institution. Additionally, many of these institutions are publically traded companies and have a fiduciary responsibility to their shareholders. Accordingly, to continue operating debit businesses in a safe and sound fashion, banks will be forced to charge customers new service charges and fees.

The current Debit payment system works efficiently providing great value, security, and convenience to bank customers and merchants. Banks earn a reasonable return on their investment in; evolving technology, anti-fraud measures, equipment, software, and customer service, thereby enabling customers to enjoy the free use of debit cards and the freedom to leave cash and checks at home. Merchants, in turn, receive guaranteed payment at a price which is exceedingly fair in relation to other payment forms they accept. The Board's Proposed Rules, however, will only serve to disrupt a fair and efficient system and artificially and unfairly impose new costs on banking customers. Compass strongly believes that the Proposed Rules are fundamentally flawed and that the Board should withdrawal and revise for legal and business reasons stated herein.

Statutory Limit on Costs Recovered

The two operative provisions of the Durbin amendment, Paragraphs (a) (2) and (a) (3), establish a simple formula. Debit card issuing banks are permitted to receive a fee for debit interchange transactions that is not greater than the sum of: (1) their costs with respect to the transactions plus; (2) an additional amount that satisfies the Federal Reserve's "standards for assessing" whether that amount is "reasonable and proportional" to those costs. The process for the Federal Reserve to establish standards for assessing "reasonable and proportional" fees consists of three actions: (1) the Federal Reserve must determine the total costs incurred by the issuer with respect to the electronic debit transaction ("Total Costs");[1] (2) The Federal Reserve must determine certain non-specific costs incurred by the issuer that cannot be "considered" ("Excluded Costs") and deduct Excluded Costs from Total Costs;[2] (3) The Federal Reserve must establish standards for assessing whether the fee ("Fee") charged by the issuer is reasonable and proportional to the Allowable Cost.[3]

In applying this three-pronged approach, there are two key issues for the Federal Reserve to determine. *First*, what costs are Excluded Costs? *Second*, what is the framework for "reasonable and proportional"? We submit that both determinations must be made by the Federal Reserve on the basis of the following considerations: (1) A limit on fees that would be "confiscatory" constitutes a violation of the Takings and Due Process Clauses of the Fifth Amendment to the United States Constitution. As discussed below, consistent judicial precedent provides that a limit on rates is confiscatory under the Constitution unless it provides for a recovery of costs *and* a reasonable return; (2) The

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1 §§ 920(a) (2), (3) (A).

2 § 920(a) (4)(B)(ii).

3 §§ 920(a)(2), (3)(A).

statute must be read as a whole. Accordingly, "Excluded Costs" must be limited so as to be as consistent as possible with the operative provisions of the Durbin Amendment; (3) Words must be interpreted in accordance with their plain meaning and prior statutory and regulatory usage; (4) Under Section 904 of the EFTA, the regulation must minimize harm to consumers, particularly low income consumers, financial institutions, and the payment system. Compass submits that the application of these considerations to the Rate Formula would result in fees substantially higher than those provided for in the Proposed Rules. Conversely, the rates provided for in the Proposed Rules would violate the Fifth Amendment of the Constitution.

The Proposed Rules Are Legally Defective

Compass believes that the proposed rules are legally defective based on four separate and distinct legal grounds. First, the language of the Durbin amendment requires the Board to set "standards for assessing," but does *not* authorize the government price controls set forth in the Proposed Rules. Second, the Proposed Rules misinterpret the phrase "reasonable and proportional" to mean *costs*, whereas the statute applies this phrase to the *fees*. Third, the proposal fails to follow the statutory definition of "costs" as "incremental costs." Finally, placing an arbitrary cap on debit interchange fees at 7-12 cents is significantly below what it actually costs issuers to provide debit card services and consumers. Moreover, it does not allow the issuers to make any return on their investment. In fact, the Proposed Rules are so confiscatory as to violate the Takings and Due Process Clauses of the Fifth Amendment to the Constitution. As an agency within the Executive branch of the federal government, the Federal Reserve is legally bound to issue rules that avoid such a result.

Harm to Consumers

Compass believes the Proposed Rules raise significant public policy concerns as a result of its negative effects on consumers. First, the Proposed Rules will force issuers to suffer a loss on every debit interchange transaction, which in turn would likely compel debit card issuers to dramatically alter or eliminate their debit card programs altogether. In addition, issuers would be forced to seek out other sources of revenue, including fees on checking accounts or debit cards. Compass believes that the upcoming changes to the law imposed by the Durbin amendment will clearly and directly shift all of the merchant's costs to consumers, threaten the health of small businesses, and undermine the stability of the payment card network by threatening financial institutions of all sizes and structure. Accordingly, the beneficiaries of this unprecedented transition in the payment card industry will be large retail chains. According to industry analysis, the largest 1.5% of merchants account for over 80% of debit transaction volume. The Durbin amendment carries no requirement that the merchants who will benefit from lower interchange fees must pass on those savings to their customers. There is no reason, absent congressional action, to believe that the merchants will do so voluntarily.

Undermines the Safety and Soundness of the Financial System

The Proposed Rules pose numerous threats to the financial system. The Proposed Rules threaten to dramatically lower revenue for card issuers during a period of financial uncertainty. The Proposed Rules might force some banks to restrict consumers' use of debit cards and debit card transactions. Any significant reduction in interchange fees will greatly increase the cost of checking accounts and lower their availability and, eventually, their desirability. The Proposed Rules set a dangerous precedent that financial institutions may be subject to future, unknowable price controls on other financial products and services, undermining important free-market principles. Financial institutions are now in jeopardy that their investments of billions of dollars into improvements of existing products and services and the creation of new ones could be rendered valueless by government price controls. This will be a strong disincentive for innovation and investment by financial institutions in payment systems and other financial products and services.

Description of the Durbin Amendment

The Durbin amendment in its current form was introduced on May 13, 2010 as a last-minute addition to the Dodd-Frank Act. There was no serious Senate debate of the Durbin amendment before it was voted on by the Senate.[4] Further, there were no hearings conducted in the House of Representatives or Senate on the Durbin amendment before it was signed into law.[5] Additionally, there was no analysis presented to either Chamber of Congress regarding the impact on consumers, the overall economy, or the banking system. In brief, the Durbin Amendment was never reviewed or debated publicly during the House-Senate Conference for Dodd-Frank. Thus, because the Durbin Amendment was part of the Senate bill, there was no stand-alone vote on it in the House of Representatives. Former United States Representative Paul Kanjorski summed up the lack of substantive debate when he stated: "Additionally, I continue to have apprehensions about the interchange provisions inserted into this legislation by the Senate. This issue, without question, would have benefitted from additional time and study."[6]

Description of the Proposed Rules

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4 Senators Dodd and Durbin were the only Senators to speak on the Durbin Amendment on the floor of the Senate. *See* S3588-90 (May 12, 2010); S3704 (May 13, 2010); S5925-27 (July 15, 2010). Representatives Frank, Kanjorski, Larson, and Brown were the only Representatives to speak on the Durbin Amendment on the floor of the House, and did so only for purposes of emphasizing the exemptions within the Amendment for smaller issuers and health care costs. *See* H5235-6 (June 30, 2010); H5254 (June 30, 2010); H5256-7 (June 30, 2010).

5 Although a few Congressional hearings were held on a variety of matters tangential to the payment of debit interchange fees (*e.g.*, federal government payment of interchange fees), there was not a single hearing specifically devoted to the Durbin Amendment, nor was the Federal Reserve or any other government agency called to testify regarding the impact of the Amendment.

6 H5238 (June 20, 2010).

The Proposed Rules were released on December 16, 2010. As an initial matter, the Board's proposal appears to assume, without analysis, that the Durbin Amendment requires the issuance of hard price controls on debit interchange fees, rather than "standards for assessing." The Proposed Rules assume that the Durbin Amendment's instruction to establish a standard for assessing fees that were "reasonable and proportional" to "the costs of the issuer" means that the fees should be *equal to* the costs of the issuer.[7] The Proposed Rules then explicitly reject the Durbin amendment's mandates to consider the "incremental" cost of each debit card transaction when determining standards for assessing whether the fees at issue were reasonable and proportional to the costs of the issuer.[8] Rather, it proposes to use "average variable cost" to calculate the issuer's cost per transaction.[9] In doing so, the Board acknowledged that the Proposed Rules were not considering "costs that are common to all debit card transactions and could never be attributed to *any* particular transaction, (i.e., fixed costs), even if those costs are specific to debit card transactions as a whole."[10] Finally, the Proposed Rules' determination of cost also does not consider an adjustment for fraud and fraud prevention costs even though those are explicitly allowed by the Durbin Amendment.[11]

<u>Exclusivity and Routing of Debit Card Transactions</u>

Section 920(b) of the EFTA imposes restrictions on the ability of debit card issuers and payment card networks to agree on the network through which, and the rules under which, debit card transactions will be processed. Specifically, Section 920(b) directs the

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7 75 Fed. Reg. 81,733.

8 75 Fed. Reg. at 81,735.

9 *Id.*

10 *Id.* at 81,736 (emphasis added).

11 *Id.* at 81,740.

Board to prescribe regulations concerning the ability of a debit issuer and a payment card network to (1) restrict the number of payment card networks on which an electronic debit transaction may be processed (exclusivity restriction) or (2) inhibit the ability of a merchant that accepts debit cards for payments to direct the routing of those electronic debit transactions over any payment card network that can process those transactions (routing restriction).

a. Exclusivity of Debit Card Transactions

Section 920(b) (1) (A) of the EFTA directs the Board to "prescribe regulations providing that an issuer or payment card network shall not . . . restrict the number of payment card networks on which an electronic debit transaction may be processed to: (i) 1 such network; or (ii) 2 or more such networks which are owned, controlled, or otherwise operated by . . . affiliated persons or . . . networks affiliated with such issuer." Therefore, this subsection requires a debit card issuer to enable those cards so that transactions may be processed over two unaffiliated payment card networks.

In addressing the exclusivity restrictions of Section 920(b) (1) (A), however, the Board has proposed two alternative approaches. Under the first alternative ("Alternative A"), the Board proposes that "[a]n issuer or payment card network shall not . . . restrict the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks."[12] Although Alternative A would have substantial unintended consequences, particularly for consumers, community banks and credit unions, this alternative at least is consistent with the plain meaning of Section 920(b)(1)(A).

Nevertheless, the Board has offered a second alternative ("Alternative B") under which "[a]n issuer or payment card network shall not . . . restrict the number of payment

[12] 75 Fed. Reg. at 81,757.

card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks for each method of authorization that may be used by the cardholder."[13] Based on Alternative B's requirement for at least two payment card networks per method of authorization, an issuer that enables both signature and PIN authorization for its debit cards would be required to enable four (or more) unaffiliated payment card networks on those debit cards—at least two unaffiliated networks for signature transactions and two unaffiliated networks for PIN transactions. Such a result is not consistent with the clear and unambiguous meaning of Section 920(b) (1) (A); that is, no part of Section 920(b)(1)(A) either requires or suggests that the Board should adopt a rule that obligates the enabling of redundant unaffiliated payment networks based on authorization methods.

In addition to its inconsistency with the clear Congressional intent to require a debit card issuer to enable no more than two unaffiliated payment card networks, Alternative B also would impose substantial new cost burdens on debit card issuers, discourage issuers from implementing important innovations, including innovations relating to security and fraud prevention and, ultimately, increase consumer costs and consumer confusion.

Moreover, proposed Alternate B is built upon the outdated premise that signature and PIN are the only two authentication methods currently in use and that these two methods will remain the focus for debit transactions in the future. While the terms "signature" and "PIN" are widely used by the payments industry today, these terms actually encompass a wide variety of authentication methods that have been created to address various specific merchant segments or payment channels, such as internet transactions and the use of key fobs, mobile phones and other devices equipped with Near Field Communication technology, which do not utilize either signature or PIN technology. By locking issuers into an outdated "signature" and "PIN" authorization

[13] 75 Fed. Reg. at 81,757.

framework, the Board ignores the rapid innovation that has resulted in industry wide adoption of alternative authentication methods beyond "signature" and "PIN". Not only would the proposal create disincentives to the development of alternative authorization methods, it could preclude entirely the future introduction of alternative authentication methods.

In addition, the Board's adoption of Alternative B would stifle other forms of debit card innovation and competition among debit card industry participants. Because Alternative B would require at least two unaffiliated payment card networks for each authorization method, any new proprietary authorization method, and related fraud prevention technology, that is only available through one payment network, would be prohibited under Alternative B. Therefore, the bizarre outcome under proposed Alternative B is that such a payment card network would be forced to license or give away its proprietary technology in order to employ that same technology for its own payment network without violating proposed Alternative B. The likely result, of course, is that without the ability to drive consumer preference based on proprietary technology and capture market share, the incentive to invest in such new technology would be greatly diminished, if not eliminated altogether.

Instead, consumers, debit card issuers, payment networks and merchants all would be better served by a regulatory framework that encourages and facilitates innovation and competition, rather than undermining innovation and competition. In fact, the current debit card systems, which provide fast, secure and reliable transactions for both consumers and merchants, were created in exactly such an innovative and competitive environment.

In addition, the adoption of Alternative B would impose even more substantial operational and compliance costs on debit card issuers and payment networks than Alternative A, at the very time that the Board is proposing to restrict the ability of card issuers to recover most of their current costs. The most obvious of these costs, of course, would be the cost to debit card issuers and networks of creating, entering into and maintaining multiple processing network and related contractual relationships and network rules for each authorization method. Not only would these regulatorily-imposed contractual relationships, which likely would never be profitable, create substantial operational inefficiencies with no increased issuer or consumer benefits, the operational costs of implementing systems capable of supporting such operational redundancies could be overwhelming.

For example, while a debit card issuer may currently have the capability of enabling two PIN debit networks on a single debit card; most merchants do not currently have the ability to accept any PIN transactions. Moreover, the functionality to enable multiple signature debit networks does not even currently exist. In order to enable signature debit network redundancy on a single card, millions of merchant terminals either would have to be reprogrammed or be replaced. In addition, in order to implement and maintain multiple signature debit networks on the same debit card, issuers, acquirers, processors and networks would be forced to incur substantial costs to upgrade, replace or even create the technologies necessary to support transaction processing among multiple signature networks.

These substantial cost increases, when combined with the Board's proposed restrictions on the ability of debit card issuers to recoup most of their existing costs of providing debit card services, and their inability to realize any return, let alone a reasonable rate of return on their investment, would require substantial restructuring of debit card programs. As a result, many consumer benefits, as well as consumer protections such as advanced security and fraud prevention measures, would need to be reduced, if not eliminated entirely. Similarly, debit issuers and payment networks, would have no incentive whatsoever to invest in new technologies aimed at improving consumer services and consumer protections.

For all of these reasons, if any exclusivity requirements are to be imposed on debit card issuers and payment networks, the only rational approach for implementing Section 920(b) (1) (A) is for the Board to strictly follow the statutory language by adopting proposed Alternative A, rather than requiring debit card issuers to contract with multiple unaffiliated payment card networks for each authorization method, as would be required under Alternative B.

b. Routing of Debit Card Transactions

Under Section 920(b) (1) (B) of the EFTA, the Board is directed to "prescribe regulations providing that an issuer or payment card network shall not . . . inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." In response to Section 920(b)(1)(B), the Board has proposed that "[a]n issuer or payment card network shall not . . . inhibit the ability of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions."[14]

In addition, proposed Commentary section 7(b)(1) states that "an issuer or payment card network is prohibited from inhibiting a merchant's ability to route or direct the transaction over any of the payment card networks that the issuer has enabled to process an electronic debit transaction for that particular debit card."[15] And, proposed Commentary section 7(b) (2) states in subsection (i) that a merchant may not be prohibited "from encouraging or discouraging a cardholder's use of a particular method of debit card authorization, such as rules prohibiting merchants from favoring a cardholder's use of PIN debit over signature debit, or from discouraging the cardholder's

[14] 75 Fed. Reg. at 81,756.

[15] 75 Fed. Reg. at 81,763.

use of signature debit."[16] The Supplementary Information accompanying the Proposed Rules also state that under these proposed comments, for example, a merchant could block the use of signature debit altogether.[17] Therefore, unlike current practices where a merchant can steer an electronic debit transaction to an available payment network, but cannot exclude specific functionality associated with a debit card (*i.e.*, PIN or signature debit functionality), the Proposed Rules would permit a merchant to do exactly that. In doing so, the Proposed Rules would permit a merchant to inaccurately represent to consumers, in its media ads or through its store signage, that the merchant accepts debit cards displaying the brands of popular debit card networks when, in fact, the merchant has no intention of processing debit transactions over those networks. Moreover, such conduct would be inconsistent with Section 920(b) (2), which states that "in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive [should] not differentiate on the basis of the issuer or the payment card network."

Even more troubling is the fact that the Board's proposal would permit merchants to override consumer choice as to how a particular debit transaction will be handled. There is no requirement, or even suggestion, in the statute that Congress intended such an anti-consumer result. To the contrary, regardless of what approach the Board determines to take on routing, the primary rule for how a transaction is routed should be consumer choice, and a merchant choice should only apply in the absence of consumer choice. In this regard, there are many reasons why a consumer might choose a signature debit transaction over a PIN debit transaction, for example, or might choose a particular payment network over another network, including security concerns. Consumers may base their choice on the benefits or features offered by a particular form of debit transaction or a particular payment network, including enhanced cardholder protections

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[16] 75 Fed. Reg. at 81,763

[17] 75 Fed. Reg. at 81,752.

that exceed current legal requirements. For example, a consumer would lose the zero liability protection provided by her selected card network (that is, the network whose brand appears on her debit card) when the merchant routes the transaction to a cheaper network that does not offer such fraud protection. Essentially, the merchant would permit a consumer to initiate a debit transaction and then transform that transaction into an entirely different transaction governed by an entirely different set of rules. Accordingly, by permitting merchants to override a consumer's choice of payment network, or her choice of authorization method, the merchant would not only deny the consumer the benefits associated with her card, but would also make it virtually impossible for the debit card issuer to accurately disclose to the consumer the terms and conditions applicable to her debit card account.

For all of these reasons, when implementing the routing restrictions of Section 920(b)(1)(B), at a minimum, the Board should require merchants to honor the choice made by the consumer for the routing of her debit transactions; namely, the network whose brand is reflected on her debit card. Not only would this approach be consistent with the purpose of the EFTA, to protect consumers, but to do otherwise would substantially decrease debit card benefits currently available to consumers, decrease competition among debit card issuers and payment networks and, ultimately, cede control of the debit payments system to merchants, rather than to consumers, card issuers or payment networks.

c. Effective Dates for Exclusivity and Routing Rules.

The Board has proposed effective dates for both Alternative A and Alternative B. Specifically, under the Board's proposal Alternative A would be effective October 1, 2011 and Alternative B would be effective January 1, 2013.[18] Although Alternative A is more consistent with statutory language and far less disruptive than Alternative B,

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[18] 75 Fed. Reg. at 81,753.

Alternative A still would require far more implementation time than the proposed October 1, 2011 effective date, given the significant operational changes that would be required throughout the payment industry. For example, debit card issuers would need to negotiate new contracts with additional unaffiliated payment networks and connectivity would need to be established with such payment card networks. In addition, other debit card industry participants, such as acquirers and processors, would need enough time to update their systems in order to handle the new payment card networks, and all payment card networks would need additional time to address the operational complexities of the new requirements. The proposed changes also would require extensive consumer education and changes to all debit card consumer agreements. Therefore, the effective date for Alternative A should be no earlier than January 1, 2013.

Additional Study and Action Needed

We submit that the following actions and revisions to the Federal Reserve's Proposed Rules would result in a fairer, more reasonable, approach to rulemaking under the Durbin Amendment, and would reduce harmful results.

Review Potential Solutions.

- Congress and the Federal Reserve should conduct studies and hearings to evaluate the true costs of providing debit card transaction services including; fraud and fraud prevention costs, maintaining processing systems, developing new support technology, as well as allowing banks making these investments a reasonable rate of return. These hearings should include industry participants, analysts, economists and regulators who can describe the likely effects of these proposed changes.

- Congress should direct the GAO to review and analyze the product of these hearings, and present its analysis to Congress for review and debate.

- Congress and the Board should delay the effective date for the Federal Reserve's rulemaking, including interchange fee and network exclusivity restrictions, until a more thorough analysis has been completed as noted above.

Consider Harm to Banking Customers.

- As an illustration, to restore the receipts that would be lost under the Federal Reserve's proposed Rules Compass would have to charge each active Debit Card Holders additional account service fees in the amount of as much as **$11 per month, or $134 per year**. The Proposed Rules will drive additional deposit account fees that will likely price many existing bank customers out of the banking system altogether. Without an insured deposit account with overdraft protections, consumers are left with limited alternatives including; check cashing services, and payday lenders. Indeed, Compass agrees with the market estimates that predict up to 5% of nation-wide banking customers will opt out of the FDIC insured banking system as a result of the Proposed Rules.

- Banks currently receive no direct compensation for the risk they take with regard to certain Debit transactions. Instead, banks simply bear those risk-related costs as part of their Debit businesses. Given the loss of revenue projected as a result of the Durbin Amendment and Proposed Rules, banks will likely adopt a strategy of accepting less transaction risk excluding certain amounts and types of transactions as unacceptable risk. As a result, both merchants and consumers will have more Debit transactions declined.

- Development of technology to prevent data compromise, cardholder intrusion and other fraudulent schemes is funded in large part by interchange fees. Loss of this financial support will discourage banks from continuing to invest in the latest service innovations and product enhancements.

Consider Impact on Merchants.

- Compass believes merchants currently pay a fair price for the considerable value they receive from the Debit system. The Debit system provides merchants with immediate authorization and guaranteed payment, resulting in increased sales, and efficient check-out processes. Debit transactions offer substantial benefits in relation to other payment options. Among these merchant benefits are; customer convenience, guaranty of funds, accelerated cash flow, increased sales, reduced overhead, an efficient tax recordkeeping system, and the ability to trace transactions. Moreover, the merchants' cost for acceptance of Debit transaction services compares equitably with their costs related to other payment options that deliver guaranteed payment.

<u>Consider the Value of Immediate Authorization and Guaranteed Payment</u>.

- According to the 2010 Federal Reserve Payments Study, the total amount of checks returned in the US decreased from $182 billion in 2006 to $103 billion in 2009. Migration of check transactions to Debit transactions helped drive this reduction in the return of bad checks to merchants. Debit transactions have proven to be safer than the acceptance of paper checks. To continue this trend toward safer transactions banks must remain diligent in their pursuit of enhanced technology, and anti-fraud, anti-identity theft security.

<u>Consider the Value of Increased Merchant Sales</u>.

- In particular, Debit transactions, which are widely accepted, give merchants the flexibility to sell through alternate channels, such as the Web, where debit cards play a key role in facilitating payment and where issuers bear an increased and significant fraud risk due to the fact that the card is not present.

<u>Appreciate the Value of a Quick and Efficient Check-out Process</u>.

- Both merchants and customers now enjoy a streamlined check-out process. In fact, fast food restaurants have realized that small ticket transactions can be processed much faster via Debit transactions than with cash and have encouraged Debit transactions at check-out to drive efficiencies.

<u>Acknowledge the Importance of Assuring a National Secure Payment Environment.</u>

- Unlike cash transactions, Debit transactions provide transparency and tractability. Debit transactions thereby benefit the nation's broader system of record keeping, as it relates to tax revenue and anti-money laundering.

- When the current debit transaction system is accurately analyzed and understood, its fairness and efficiency are clearly demonstrated. Banks, banking customers and merchants all benefit from the convenience and ease of a system that facilitates consumer transactions. Banks should be allowed to run their Debit business as a business -- where they are able to cover all costs (including all variable and fixed costs—something that the Fed's proposal doesn't allow for), and receive a reasonable return for the value they provide.

CONCLUSION

In fairness to all, neither the Board nor the card industry has had adequate time to consider the myriad of difficult issues that the Proposed Rules trigger. In the haste to implement change in the card industry Congress has not afforded the Board the opportunity to properly research and study issues critical to consumers, merchants, and card issuers. Compass would ask the Board to take the additional time needed to carefully consider the issues identified in this Comment Letter and those submitted by other stakeholders.

In closing, Compass reiterates our opposition to the Proposed Rules as presently written. We strongly urge the Federal Reserve to revise its proposal to:

- Remove the price controls from its proposal and only set standards for assessing fees,
- Use an incremental costs baseline rather than average variable cost,
- Reconsider the wide range consequences of imposing new network exclusivity and routing standards,
- Provide adequate time for the industry to adopt and implement reasonable and appropriate changes, and
- Permit banks to earn a reasonable profit on their debit card services.

Compass expresses its sincere thanks to the Board for the opportunity to comment. If you have any questions, please feel free to contact me at (713) 831-5677.

Sincerely,

Roger D. Trana
SVP & Senior Corporate Counsel
Compass Bank